



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bonneville Blue Print Supply

File: B-228183

Date: November 18, 1987

DIGEST

Where contracting agency did not provide protester/incumbent contractor with the solicitation, in spite of several requests by the incumbent contractor that agency procurement officials do so, incumbent contractor was improperly excluded from the competition in violation of the Competition in Contracting Act of 1984, which requires "full and open" competitive procedures.

DECISION

Bonneville Blue Print Supply (Bonneville) protests the proposed award of a contract under invitation for bids (IFB) No. R4-87-09, issued by the Forest Service, U. S. Department of Agriculture, for reproduction services. Bonneville complains that even though it was the incumbent contractor the agency failed to provide it with a copy of the solicitation prior to the bid opening date, preventing it from competing under the solicitation.

We sustain the protest.

This procurement was for blueprint reproduction services for 1 year beginning October 1, 1987, with four additional 1-year options. The requirement was synopsisized in the Commerce Business Daily (CBD) on July 17; the solicitation was issued on August 4. Eight potential bidders responded to the CBD synopsis and requested a copy of the solicitation package, but only one bid, from Blueprint Reproduction Specialists (Blueprint), was received by the Forest Service at bid opening on September 3.

According to Bonneville and not disputed by the Forest Service, Bonneville, the incumbent contractor for the past 3 years, had worked with the contracting officer "in the past months on the new contract requirements" and on several occasions had informally requested that it receive a copy of

the new solicitation package. However, after the CBD synopsis was published but before the solicitation was issued, the contracting officer retired. Bonneville's informal requests were not communicated to the successor contracting officer with the result that Bonneville was never sent a copy of the solicitation package. Bonneville points out that the new contracting officer should have been aware that it was the incumbent contractor since she signed an amendment modifying Bonneville's existing contract on August 21, a week and a half before bid opening under the new solicitation. Bonneville did not learn of the issuance of the new solicitation until September 4, 1 day after bid opening. Bonneville filed a protest with our Office on September 9, arguing that it had been improperly excluded from the competition and requesting that it be allowed to compete under a resolicitation.^{1/}

In response to Bonneville's arguments, the Forest Service contends that Bonneville should have been on notice of the procurement through the CBD notice, and should have formally requested a copy of the IFB in response thereto as did other potential bidders. Although the Forest Service admits that there was a lack of communication between the original and successor contracting officers concerning Bonneville's request for the solicitation package, it argues that there was no deliberate attempt to exclude Bonneville from the competition and that the one bid it did receive was at a reasonable price.

We believe the Forest Service fails to recognize that the Competition in Contracting Act of 1984 (CICA) places a duty on contracting agencies to take positive, effective steps toward assuring that all responsible sources are permitted to compete. Agencies are required when procuring property or services to obtain full and open competition through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A)

^{1/} Blueprint argues that pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.1(f) (1987), we should dismiss Bonneville's protest because it does not set forth its legal grounds, state the form of relief requested or specifically request a ruling by the Comptroller General. We think to do so would elevate form over substance since in its letter requesting our Office to "review the [Forest Service's] bidding procedures" Bonneville asserts that as the incumbent contractor it improperly was not provided with a copy of the IFB and "should be entitled to bid on this contract." In their substantive comments, neither Blueprint nor the Forest Service evidences any difficulty understanding the basis for Bonneville's protest or that what it seeks is an opportunity to participate in a resolicitation.

(Supp. III 1985). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." Id. §§ 259(c) and 403(7). We have said that in view of the clear intent of Congress to make full and open competition the standard for conducting government procurements, we will give careful scrutiny to an allegation that potential bidders have not been provided an opportunity to compete for a particular contract. See Tran World Maintenance Inc., 65 Comp. Gen. 401 (1986), 86-1 C.P.D. ¶ 239. In so doing, we will take into account all of the circumstances surrounding a firm's nonreceipt of solicitation materials, as well as the agency's explanation. Id. Using this approach, we have sustained protests and recommended resolicitation where we found that a firm's failure to receive a solicitation was the result of significant deficiencies on the part of the contracting agency. See Trans World Maintenance, Inc., B-220947, supra, 86-1 C.P.D. ¶ 239; Dan's Moving & Storage, Inc., B-222431, May 28, 1986, 86-1 C.P.D. ¶ 496.

We reach a similar result here. We find that Bonneville was improperly denied a copy of the solicitation in violation of CICA's requirement for "full and open" competition. Just as was the situation in Trans World Maintenance, Inc., and Dan's Moving & Storage, Inc., cases with similar fact patterns, Bonneville was the incumbent contractor performing the very same services for which the new procurement was conducted and there is nothing in the record to suggest that Bonneville is other than a responsible source. As we state in the prior cases, the incumbent contractor had a right to expect to be solicited for the follow-on contract. In addition, Bonneville informally requested of the then-contracting officer a copy of the solicitation on several occasions before bid opening. While Bonneville did not make a formal inquiry in direct response to the CBD synopsis, we think the firm's attempts to obtain a copy of the solicitation were reasonable under the circumstances. Bonneville had asked the former contracting officer on several occasions to make sure it received a copy of the solicitation when issued. When the former contracting officer retired, it failed to communicate Bonneville's request to his successor. The new contracting officer--while apparently aware that Bonneville was the incumbent contractor since she signed a modification to its contract a week and a half prior to bid opening--did not take the most obvious step which was simply to contact Bonneville, as the incumbent contractor, to include it in the competition under the new solicitation. The Forest Service has neither refuted these facts nor offered an adequate explanation for its failure to provide a copy of the solicitation to Bonneville. While we do not find evidence of any deliberate attempt by the Forest Service to exclude Bonneville from competing, we conclude

that the Forest Service's actions prevented a responsible source from competing in violation of CICA's mandate for full and open competition. See Dan's Moving & Storage, Inc., B-222431, supra at 1, 86-1 C.P.D. ¶ 496 at 1.

To remedy this situation, we find that the appropriate course of action is for the Forest Service to resolicit. We recognize that rejecting bids after they have been publicly opened tends to discourage competition, because it results in making them public without award, which is contrary to the interests of the low bidder, and because rejection means that bidders have expended effort and money to prepare their bids without the possibility of acceptance. See Trans World Maintenance, Inc., B-220947, supra at 6, 86-1 C.P.D. ¶ 239 at 6. However, in view of the congressional mandate for "full and open" competition, we believe that the government's interests are best served in the present case by canceling the solicitation and giving all responsible sources a fair opportunity to compete on the resolicitation especially in light of the fact that only one bid was received in response to the original solicitation. We therefore are recommending that the Forest Service cancel the invitation and resolicit bids using full and open competitive procedures.

The protest is sustained.



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